

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

EDILBERTO BERRIO ORTIZ,

Defendant.

09-cr-109 (JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.:

In 2011, Mr. Ortiz was convicted of hostage taking and conspiracy to engage in hostage taking, 6/21/11 Order, ECF No. 108, and the Court sentenced Mr. Ortiz to 204 months' imprisonment, Judgment, ECF No. 131. On June 22, 2023, Mr. Ortiz filed a motion for a sentence reduction under 18 U.S.C. § 3582. See Def. Mot., ECF No. 172. Mr. Ortiz argues that he should be granted a sentence of time served because he has rehabilitated himself in prison, he suffers from an eye condition (double pterygium), his mother suffers from severe medical issues, and as of 2016, FARC is no longer designated a terrorist organization by the U.S. State Department.

Even assuming *arguendo* that Mr. Ortiz has exhausted his administrative remedies, the Court finds that Mr. Ortiz has failed to show extraordinary and compelling circumstances warranting a sentence reduction. First, the fact that FARC is no longer considered a terrorist organization does not change that FARC was considered a terrorist organization at the time Mr. Ortiz committed his crimes. See United States v. Ortiz, 525 F. App'x 41, 43 (2d Cir. 2013) (affirming

this Court's application of the sentencing enhancement for "committ[ing] a felony that 'was intended to promote[] a federal crime of terrorism'" (quoting U.S.S.G. § 3A1.4(a)). Second, Mr. Ortiz has not presented sufficient evidence to show that his eye condition is sufficiently serious to rise to the level of an extraordinary and compelling circumstance. Nor has he presented sufficient evidence that his mother's illness constitutes an extraordinary and compelling circumstance, as he has not presented any evidence that he is the only available caretaker for his ailing mother. Finally, while the Court commends Mr. Ortiz efforts to rehabilitate himself, that rehabilitation in and of itself is insufficient to constitute an extraordinary and compelling circumstance warranting immediate release. See United States v. Brooker, 976 F.3d 228, 237-38 (2d Cir. 2020). Accordingly, Mr. Ortiz's motion for a sentence reduction is denied.

SO ORDERED.

New York, NY
December 20, 2023



JED S. RAKOFF, U.S.D.J.